

)	
REBECCA LEYBA, Appellant)	
)	
and)	Docket No. 05-947
)	Issued: July 19, 2005
DEPARTMENT OF VETERANS AFFAIRS,)	
VETERANS ADMINISTRATION MEDICAL)	
CENTER, Albuquerque, NM, Employer)	
)	

Case Submitted on the Record

Before:
COLLEEN DUFFY KIKO, Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

On March 7, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' February 24, 2005 merit decision with respect to her claim for an emotional condition. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

The issue is whether appellant has established an emotional condition causally related to compensable factors of her federal employment.

The case was before the Board on a prior appeal. In a decision dated February 6, 2004, the Board remanded the case for proper findings regarding whether a compensable work factor had been established.¹ The Board noted that appellant had alleged harassment and verbal abuse

¹ Docket No. 04-186 (issued February 6, 2004).

by a supervisor, Michael Gordon, and had submitted witness statements. The history of the case is contained in the Board's prior decision and is incorporated herein by reference.

The witness statements included a January 14, 2003 statement from Coworker Frances Dennison, who reported that she witnessed Mr. Gordon "yell and make derogatory comments" to appellant. In a July 22, 2003 statement, Ms. Dennison stated that Mr. Gordon was "extremely rude" to appellant, always cross with her and extremely demanding. Another coworker, Estella Eras, stated that Mr. Gordon would call her to find out what appellant was doing and when she arrived. She indicated that Mr. Gordon seemed very interested in appellant's private life. In a May 29, 2003 statement, Pamela Lopez, a coworker, reported that Mr. Gordon had a negative attitude toward appellant and reprimanded her like a parent. Margaret Martinez reported in a June 12, 2003 statement that on August 7, 2002 appellant was confronted by Mr. Gordon, who appeared upset and angry. She stated that later she could hear Mr. Gordon yelling. Another coworker, Leila Castillo, reported in an August 15, 2003 statement that when appellant would leave the office, Mr. Gordon always wanted to know where she was and when she returned. She reported that Mr. Gordon created a hostile environment by trying to bait employees against one another "by falsely telling some employees what other employees said about them."

A patient at the employing establishment, Arsenio Sanchez, stated that he observed Mr. Gordon treat appellant like a child. Another patient, Carlos Gonzales, stated that Mr. Gordon was rude and an unprofessional supervisor with respect to appellant, as he would not hesitate to yell and speak harshly with her.

By decision dated March 12, 2004, the Office denied appellant's claim for compensation. The Office reviewed the witness statements and found them to be general in nature and not sufficient to establish a compensable work factor.

In a letter dated September 1, 2004, appellant requested reconsideration of her claim. Appellant stated that there was evidence that Equal Employment Opportunity (EEO) charges were filed against Mr. Gordon and the Office was in a position to determine why he left employment in March 2003.

In a decision dated February 24, 2005, the Office reviewed evidence of record and denied modification.

LEGAL PRECEDENT

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which she claims compensation was caused or adversely affected by factors of her federal employment.² This burden includes the submission of detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.³

² *Pamela R. Rice*, 38 ECAB 838 (1987).

³ *Roger Williams*, 52 ECAB 468 (2001); *Anna C. Leanza*, 48 ECAB 115 (1996).

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or illness has some connection with the employment but nevertheless does not come within the coverage of workers' compensation. These injuries occur in the course of the employment and have some kind of causal connection with it but nevertheless are not covered because they are found not to have arisen out of the employment. Disability is not covered where it results from an employee's frustration over not being permitted to work in a particular environment or to hold a particular position, or secure a promotion. On the other hand, where disability results from an employee's emotional reaction to her regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.⁴

The Board has generally recognized that verbal abuse in the workplace can be a compensable work factor under certain circumstances.⁵ This, however, does not imply that every statement uttered in the workplace will give rise to a compensable factor of employment. Unsubstantiated allegations of harassment are not determinative of whether the actions occurred; a claimant must substantiate a factual basis for the allegations with probative and reliable evidence.⁶

ANALYSIS

Appellant alleged that she sustained an emotional condition as a result of verbal abuse and harassment by a supervisor, Mr. Gordon. She submitted witness statements regarding observed interaction between appellant and the supervisor in the workplace. The statements are of limited probative value because they do not provide specific detail as to any instances of alleged verbal abuse or derogatory comments. Witness accounts that do not provide a detailed description of the specific statements made are of limited probative value.⁷

The witnesses generally stated that Mr. Gordon was rude to appellant and made derogatory or condescending comments, but no detail is provided as to the actual or specific comments made to appellant, when those comments were made, or under what circumstances. A coworker referred to an August 7, 2002 incident without providing probative evidence of verbal abuse. She stated that the supervisor appeared angry and upset, and later she heard yelling. The Board has held that the raising of a voice during the course of a conversation does not warrant a finding of verbal abuse.⁸ Without a detailed description of specific statements or actions by the supervisor toward appellant, the evidence is not sufficient to establish a compensable work factor in this case.

⁴ *Lillian Cutler*, 28 ECAB 125 (1976).

⁵ *See Fred Faber*, 52 ECAB 107 (2000).

⁶ *See Dennis J. Balogh*, 52 ECAB 232 (2001).

⁷ *See Joe M. Hagewood*, 56 ECAB ____ (Docket No. 04-1290, issued April 26, 2005); *Donney T. Drennon-Gala*, 56 ECAB ____ (Docket No. 04-2190, issued April 26, 2005).

⁸ *Carolyn S. Philpott*, 51 ECAB 175, 179 (1999).

Although appellant has referred to the filing of complaints against the supervisor by other employees, the issue in this case is whether the evidence of record is sufficient to substantiate appellant's allegation that she was subject to verbal abuse or harassment. The Board finds that the evidence does not substantiate a compensable work factor in this case. Since appellant has not established a compensable work factor, the Board will not address the medical evidence.⁹

CONCLUSION

The Board finds that the evidence is not sufficient to establish an emotional condition causally related to a compensable work factor.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated February 24, 2005 and March 12, 2004 are affirmed.

Issued: July 19, 2005
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

⁹ See *Margaret S. Krzycki*, 43 ECAB 496 (1992).